

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA R. GREER and U.S. POSTAL SERVICE,
DALLAS BULK MAIL CENTER, Dallas, Tex.

*Docket No. 96-1451; Submitted on the Record;
Issued June 12, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence on or after March 24, 1995 causally related to her February 15, 1992 employment injury.

On February 15, 1992 appellant, then a 34-year old mail handler, injured her back while handling sacks of mail. She stopped work on February 22, 1992, returned to limited-duty work intermittently until returning to light-duty work on November 2, 1992. During this period, appellant submitted reports from her physician, Dr. Radie F. Perry, a Board-certified physical medicine and rehabilitation specialist, who noted appellant's status and listed her work restrictions. The Office of Workers' Compensation Programs accepted the claim for a low back sprain and paid appropriate benefits.

In a November 2, 1992 report, Dr. Perry noted that appellant had reached maximum medical improvement and listed medical restrictions, which included a 20 pound lifting restriction. In a January 12, 1993 report, Dr. Perry noted that appellant is still on modified duty and recommended that modified duty and physical therapy continue.

In a June 29, 1993 medical report, Dr. Perry noted that appellant was last seen five months earlier and that she has been working light duty at the employing establishment. Dr. Perry noted that appellant complained of having more back problems for the last month and a half. Dr. Perry noted that appellant stated that she felt like it stemmed from doing some housework and lifting her grandmother who had a stroke. Dr. Perry diagnosed a mild flare-up of right lower extremity radiculopathy. Dr. Perry recommended continuation of appellant's modified duties.

On April 5, 1995 appellant filed a notice of recurrence of disability alleging that a recurrence of her original injury occurred on March 24, 1995. Appellant stated that she recently started to experience a burning pain in her lower back that goes down her legs when she picks up

too much weight. Appellant stated that she could not sit or stand for long periods of time. The reverse side of the claim form indicated that following the original injury, appellant was given a limited-duty position with a medical limitation of lifting no greater than 50 pounds. The claim form did not indicate that appellant stopped working following her alleged recurrence.

In an April 17, 1995 medical report, Dr. Perry noted appellant's complaint of a recent flare-up of her low back pain and that she has had an excellent response to some local trigger point injections. After performing an examination, Dr. Perry opined that appellant's complaints were "similar, if not identical problem, [which] she has had before and this appears to be just a flare-up." Dr. Perry, however, changed appellant's restrictions to lifting of 20 to 50 pounds. In a Work Restriction Evaluation form dated April 17, 1995, Dr. Perry noted the lifting restriction of 20 to 50 pounds and indicated that appellant had reached maximum improvement.

In a January 16, 1996 letter, the Office advised appellant that if she wished to pursue her recurrence claim, she needed to provide additional evidence. Specifically, the Office requested that appellant provide a description of her duties on return to work following the original injury, a statement of explanation as to appellant's belief that her current condition is related to the original injury and medical records, including clinical notes, of all treatment received for her low back condition since June 1993 including a rationalized narrative medical report from her physician.

In response to the Office's request, appellant submitted medical evidence previously of record. She also submitted a January 19, 1996 letter, indicating the course of her condition and indicating that she had returned to light duty work after her original injury.

By decision dated March 4, 1996, the Office denied appellant's notice of recurrence of disability on the grounds that the medical evidence failed to demonstrate a causal relationship between the February 15, 1992 employment injury and the claim for recurrence of disability and continuing medical treatment.

The Board finds that appellant has not established that she sustained a recurrence of disability causally related to her accepted February 15, 1992 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹ Appellant has not alleged in this case that there was a change in her light-duty job requirements, rather appellant has alleged that her injury-related back condition worsened.

¹ *Mary A. Howard*, 45 ECAB 646 (1994).

Appellant has not submitted sufficient medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, has concluded that her disability commencing March 24, 1995 is causally related to her February 15, 1992 employment injury or that she was unable to perform her modified job duties beginning March 24, 1995. In support of her claim, appellant submitted medical reports from Dr. Perry, her treating physician. While the reports from Dr. Perry support the fact that appellant has a low back condition, which is subject to flare-ups, they do not contain a reasoned opinion explaining why appellant sustained a recurrence of disability beginning March 24, 1995 causally related to the February 15, 1992 injury, which is the issue in this case.

Dr. Perry failed to provide an opinion on whether the flare-ups appellant experienced from her right lower extremity radiculopathy were causally related to the February 15, 1992 employment injury and, thus, his opinion is insufficient to meet appellant's burden of proof.² Moreover, appellant was advised by letter dated January 16, 1995 of the information required for a condition to be considered a recurrence. It is not enough for appellant to allege a causal relationship between his work and his stated condition; evidence of the nature of any disabling condition and its relationship to a particular's employee's work can only be given by a physician, fully acquainted with the relevant facts and circumstances of the employment injury and the medical findings. Thus, as a lay person, appellant's opinion that her current low back pain is causally related to her February 15, 1992 employment injury, has no probative value on the medical issue.³ Appellant, therefore, has not provided probative medical evidence sufficient to establish that she sustained a recurrence of disability beginning March 24, 1995 causally related to her February 15, 1992 employment injury, such that she could no longer perform her modified light-duty work.

Since appellant bears the burden of establishing that the condition and disability, for which compensation is claimed is due to the February 15, 1992 accepted employment injury, she has not met her burden of proof in establishing her claim for a recurrence of disability.

² *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

³ *Birger Areskog*, 30 ECAB 571 (1979); *see also James A. Long*, 40 ECAB 538 (1989).

The decision of the Office of Workers' Compensation Programs dated March 4, 1996 is hereby affirmed.

Dated, Washington, D.C.
June 12, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member